

**Morgan, Lewis & Bockius LLP**  
(A Pennsylvania Limited Liability Partnership)  
1701 Market Street  
Philadelphia, PA 19103  
215.963.5077/5268  
sbouchard@morganlewis.com  
shorowitz@morganlewis.com  
SB(5199)/SH(8178)  
Attorneys for Defendant Educational Commission for Medical Graduates

**ABDUL J. MALIK,**

Plaintiff,

v.

**EDUCATIONAL COMMISSION  
FOR FOREIGN MEDICAL  
GRADUATES,**

Defendant.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY,  
NEWARK VICINAGE**

Civil Action No. 04-CV-4360 (JAP/MCA)

**NOTICE OF MOTION TO DISMISS  
PLAINTIFF'S COMPLAINT**

**(ECF filing per Clerk's Office Quality Control  
Message dated October 1, 2004)**

**TO:** Abdul J. Malik  
99 Manning Avenue  
Jersey City, NJ 07304

**PLEASE TAKE NOTICE** that on October 25, 2004, or as soon thereafter as counsel may be heard, Defendant Educational Commission for Foreign Medical Graduates ("ECFMG") will request that the United States District Court, District of New Jersey, Newark Vicinage, issue and Order granting ECFMG's Motion to Dismiss Plaintiff's Complaint. Oral argument is not requested.

**PLEASE TAKE FURTHER NOTICE** that, in support of its Motion, ECFMG shall rely upon its accompanying Memorandum of Law and proposed form of Order.

Respectfully submitted,

s/Sharri H. Horowitz  
Sarah E. Bouchard (SB5199)  
Sharri H. Horowitz (SH8178)  
Attorneys for Defendant ECFMG

DATED: September 28, 2004

**Morgan, Lewis & Bockius LLP**  
(A Pennsylvania Limited Liability Partnership)  
1701 Market Street  
Philadelphia, PA 19103  
215.963.5077/5268  
sbouchard@morganlewis.com  
shorowitz@morganlewis.com  
SB(5199)/SH(8178)  
Attorneys for Defendant Educational Commission for Medical Graduates

**ABDUL J. MALIK,**

Plaintiff,

v.

**EDUCATIONAL COMMISSION  
FOR FOREIGN MEDICAL  
GRADUATES,**

Defendant.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY,  
NEWARK VICINAGE**

Civil Action No. 04-CV-4360 (JAP/MCA)

**MOTION TO DISMISS PLAINTIFF'S  
COMPLAINT PURSUANT TO FED. R. CIV. P.  
12(b)(6)**

**(ECF filing per Clerk's Office Quality Control  
Message dated October 1, 2004)**

Defendant Educational Commission for Foreign Medical Graduates

("ECFMG"), by its attorneys, pursuant to Fed. R. Civ. P. 12(b)(6), moves for an Order dismissing Plaintiff's Complaint in its entirety. The grounds upon which this Motion is based are as follows:

1. Plaintiff's Complaint, asserting disability discrimination, fails to state a claim under the Americans with Disabilities Act ("ADA"), Title III, 42 U.S.C. § 12181 - 12189 because the ADA does not provide for monetary damages. Plaintiff seeks damages totalling \$20 million. Even if Plaintiff has pleaded other elements of his claim, the ADA does not provide the relief that he seeks.

2. Plaintiff's Complaint, asserting disability discrimination, fails to state a claim because it does not satisfy the two-year statute of limitations applicable to suits brought under the ADA.

In support of this Motion, Defendant relies upon the accompanying Memorandum of Law. Oral argument is not requested.

Respectfully submitted,

Of Counsel: Morgan, Lewis & Bockius LLP	<u>/s/ Sharri H. Horowitz</u> Sarah E. Bouchard Sharri H. Horowitz
--	--

Date: September 28, 2004